IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 902 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 8.4.2004 in W.P.No 5235 of 2004 on the file of the High Court.)

Between:

D.Kanna Babu, S/o sSrererama Murthy

Aged about 39 years, President, The Chodavaram

Cooperative Sugars Ltd., Govada, Vizag District

..... APPELLANT

(Third Party Appellant)

AND

1. K.Satyam

2. Government of Andhra Pradesh

Rep. By its Secretary

Industries & Commerce (Sugars) Dept.,

Secretariat, Saifabad, Hyderabad

3. The Commissioner & Director of Sugar

And Care Commissioner, Hyderabad, Opp: Control

Room, Public Garden, Nampally, Hyderabad

4. The Chodavaram Cooperative Sugars Ltd.

Govada, represented by its Managing Director,

Vizakhapatnam District

....RESPONDENT(S)

(Writ petitioner/ respondents)

Counsel for the Appellant: MR.P.KAMLAKAR
Counsel for the respondent No.1: Mr.S.Narasimha Rao
Counsel for the Respondent No.2 and 3: GP FOR INDUSTRIES & COMMERCE
Counsel for the Respondent No.4: Government Pleader for Cooperation.
Counsel for the Respondent Nos.1 and 2: Sri G.Vidya Sagar

The Court made the following :

JUDGMENT: (Per Hon'ble Sri Justice B.Sudershan Reddy)

The President, Chodavaram Cooperative Sugars Limited, Govada, preferred this appeal with the leave of the Court challenging the order, dated 8.4.2004 made in W.P.No.5235 of 2004 by the learned single Judge of this Court whereunder the learned single Judge disposed of the writ petition filed by the 1st respondent herein directing the 3rd respondent – Commissioner and Director of Sugar & Cane Commissioner to pass appropriate orders. The learned Judge while disposing of the writ petition directing the Commissioner and Director of Sugar and Cane Commissioner, observed that 'there are clear lapses on the part of the Managing Committee of the Society in not conducting the general body meeting in terms of Section 32 of the A.P. Cooperative Societies Act, 1964 (for short "the Act")'.

We are required to notice that the Managing Committee of the Society was not impleaded as a party respondent in the writ petition and that is how, this appeal has been filed with the leave of the Court.

Sri E.Manohar, learned senior counsel appearing on behalf of the appellant *inter alia* submitted that the judgment under appeal suffers from incurable legal infirmities. The learned Judge ought to have dismissed the writ petition on the simple ground of non-impleadment of proper and necessary parties. It is further contended that the learned Judge having directed the Commissioner and

Director of Sugar and Cane Commissioner to decide the matter and pass appropriate orders in accordance with law, ought not to have recorded any finding whatsoever on the question as to whether the Managing Committee of the society committed any violation of the requirement under Section 32(1-A) of the Act.

Sri G.Vidya Sagar, learned counsel appearing on behalf of the respondent-writ petitioner submitted that the report submitted by the Managing Director is clear and indicates that the Managing Committee of the Society-Chodavaram Cooperative Sugars Limited failed to convene the general body meeting as is required under Section 32(1-A) of the Act.

In order to consider the question as to whether the order under appeal suffers from legal infirmities, we are required to notice the case set up by the writ petitioner. That according to the writ petitioner, the elections to the Cooperative Society were held on 3.4.2000. The term of the Committee is for a period of five years. It is alleged that the Managing Committee of the Society was incurring huge expenses in erecting Weigh Bridges, etc. without any prior approval of the general body of the Society.

The gravamen of the complaint is that the committee failed to conduct the general body meetings as is required under Section 32(1-A) of the Act. Therefore, the members of the Managing Committee ceased to hold the office on the date of next, after 1st day on which general body meeting should have been held. According to the petitioner, the general body meeting of the Society was held on 30.6.2002 and thereafter, no meetings whatsoever were conducted. The general body meeting for the year 2002-2003 has to be conducted between 30.9.2002 and 31.3.2003, but the Managing Committee failed to conduct the meeting as prescribed under the Act.

The writ petitioner made a representation on 13.10.2003 to the 3rd respondent on which the 3rd respondent requested the Managing Director of the Society to offer remarks. The Managing Director, in turn, addressed a letter on 17.11.2003 informing that the Society did not conduct any general body meeting for the cooperative year 1.4.2002 to 31.3.2003. That for the year 2003-2004 also, the general body meeting was not being conducted by the Managing Committee of

the Society. This is the sum and substance of the case set up by writ petitioner.

In the counter affidavit filed by the Assistant Director, Office of the Commissioner and Director of Sugar & Cane Commissioner, Hyderabad, it is *inter alia* stated that the President of the Managing Committee has submitted his explanation on 11.2.2004 duly stating that the Society has conducted general body meeting on 26.6.2002 i.e., during the year 2002-2003 and presumed that there is no need to conduct the general body meeting again. The Society has taken up modernization and expansion and with a view to catch up 2002-2003 crushing operations with full expanded capacity of 4000 TCD and due to paucity of time, the general body meeting could not be conducted. The non-convening of the general body meeting is neither intentional nor to violate the provisions of the Act.

It is admitted that the explanation submitted by the President is under examination and the same shall be forwarded to the 2nd respondent-Government for taking decision. It is further explained that necessary action had already been initiated by the 3rd respondent and the matter is actually under examination of the 2nd respondent.

In our considered opinion, the learned single Judge having directed the 3rd respondent to take an appropriate action on the representation submitted by the petitioner, ought not to have recorded any finding whatsoever to the effect, the Managing Committee of the Society failed to conduct general body meetings in terms of Section 32(1-A) of the Act, more so, in the absence of the Managing Committee being impleaded as party respondent.

It is now evident that the 3rd respondent having examined the representation made by the petitioner, set the law in motion and issued notice to the President of the Managing Committee and an enquiry is being held in the matter. It appears that the 3rd respondent-Commissioner had also informed the Government of A.P.-2nd respondent herein about the state of affairs. The Government of A.P. in its discretion is even entitled to grant exemption of the requirement of holding general body meeting under Section 32(1-A) of the Act. It is not necessary to express any further opinion on these aspects of the

matter.

Interests of justice will be met by directing the 3rd respondent herein to complete the action initiated by him in accordance with law which may include submission of report to the Government requiring the Government to grant exemption to Society from the provisions of the Act which requires causing of general body meeting.

In the circumstances, the order under appeal is set aside. The writ appeal is disposed of directing the 3rd respondent herein to take appropriate action in accordance with law. This order shall not preclude the 2nd respondent-Government from issuing such directions as may be necessary in view of the averments made in the representation submitted by the President of the Society. No order as to costs.

(B.SUDERSHAN REDDY,J.)

27th July, 2004

(K.C.BHANU,J.)

Msv/bcj

To

1 The secretary, Government of Andhra Pradesh

Industries & Commerce (Sugars) Dept.,

Secretariat, Saifabad, Hyderabad

2. The Commissioner & Director of Sugar

And Care Commissioner, Hyderabad, Opp: Control

Room, Public Garden, Nampally, Hyderabad

3. The Managing Director, Chodavaram Cooperative Sugars Ltd.

Govada, Visakhapatnam District

4. Two C.Cs. to the Government Pleader for Industries and Commerce, High Court Buildings, Hyderabad (OUT)

5. Two C.D. copies

6. Two C.Cs. to the Government Pleader for Cooperation, High Court Buildings, Hyderabad (OUT)